

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JENNIFER HICKS,)	CASE NO. 4:13CV02222
)	
Plaintiff,)	JUDGE BENITA Y. PEARSON
)	
v.)	MAGISTRATE JUDGE
)	KATHLEEN B. BURKE
COMPASS FAMILY AND)	
COMMUNITY SERVICES,)	
)	<u>REPORT AND RECOMMENDATION</u>
Defendant.)	

This case is before the undersigned United States Magistrate Judge for general pretrial supervision pursuant to an order of referral by Judge Benita Y. Pearson on October 28, 2013. Doc. 3. As discussed below, Plaintiff has failed to serve Defendant within the 120 day time limit for service provided by [Rule 4\(m\) of the Federal Rules of Civil Procedure](#) and has failed to show cause as to why service has not been made. Accordingly, the undersigned **RECOMMENDS** that this case be dismissed without prejudice.

I. Background

On October 8, 2013, *pro se* Plaintiff Jennifer Hicks (“Plaintiff”) filed a Complaint against Defendant Compass Family and Community Services (“Defendant”). Doc. 1. Pursuant to [Fed. R. Civ. P. 4\(m\)](#) service of a summons must be made within 120 days of the filing of the Complaint. In this case, service of the summons should have been made by February 6, 2014. On February 21, 2014, this Court entered an Order to Show Cause ordering Plaintiff to establish that service was made on Defendant on or before February 6, 2014, or show cause in writing

why service was not made within that time. Doc. 4. Plaintiff was warned that failure to serve Defendants within the time provided by [Fed. R. Civ. P. 4\(m\)](#) or failure to respond to the show cause order may result in dismissal for want of prosecution. *Id.* Plaintiff has not responded to the Order to Show Cause.

II. Discussion

“Once a plaintiff has commenced an action in the Federal Courts, the burden is upon that party to obtain service of process upon each defendant.” [Mosquera v. Delgado, 4:09CV1402, 2010 WL 2010973 \(N.D. Ohio Apr. 30, 2010\)](#) (J. Pearson) *report and recommendation adopted*, 4:09CV1402, [2010 WL 2010969 \(N.D. Ohio May 20, 2010\)](#). “To effectuate service upon a defendant, the plaintiff is required by the Civil Rules to act in a reasonable and diligent manner.”


Id. Pursuant to [Federal Rule of Civil Procedure 4\(m\)](#):

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under [Rule 4\(f\)](#) or [4\(j\)\(1\)](#).

In this case, the docket shows that Plaintiff has made no attempt to serve Defendant. Moreover, Plaintiff has failed to show good cause for her failure to serve. Consequently, the undersigned **RECOMMENDS** that the Court dismiss Plaintiff’s Complaint against Defendant without prejudice pursuant to [Rule 4\(m\) of the Federal Rules of Civil Procedure](#) for failure to perfect service upon Defendant. [Sizemore v. Predojjev, 506CV2926, 2007 WL 2509868](#) (N.D. Ohio

Aug. 30, 2007) (dismissing plaintiff's complaint without prejudice for failure to serve under [Rule 4\(m\)](#)).

Dated: April 21, 2014

A handwritten signature in black ink, appearing to read "Kathleen B. Burke", written over a horizontal line.

Kathleen B. Burke
United States Magistrate Judge

OBJECTIONS

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days after the party objecting has been served with a copy of this Report and Recommendation. Failure to file objections within the specified time may waive the right to appeal the District Court's order. See [United States v. Walters, 638 F.2d 947 \(6th Cir. 1981\)](#). See also [Thomas v. Arn, 474 U.S. 140 \(1985\), reh'g denied, 474 U.S. 1111 \(1986\)](#).